

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

(New Administrative Regulation)

907 KAR 14:005. Health Care-Acquired Conditions and Other Provider Preventable Conditions.

RELATES TO: KRS 205.560

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 CFR 447.26, 42 USC 1396a Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program policies, including managed care and non-managed care, regarding health care-acquired conditions and provider preventable conditions.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Health care-acquired condition" is defined by 42 CFR 447.26.

(3) "Managed care organization" means an entity for which the Department for

Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(4) "Provider" is defined by KRS 205.8451(7).

(5) "Recipient" is defined by KRS 205.8451(9).

Section 2. Health Care-Acquired Conditions. (1) The department or a managed care organization shall not reimburse for medical assistance in any inpatient hospital setting for a health care-acquired condition.

(2) In accordance with 42 CFR 447.26(d), if a health care-acquired condition occurs, a hospital shall:

(a) Identify, on the claim or document attached to or associated with the claim or course of treatment, the health care-acquired condition; and

(b) Submit the claim, a document associated with or regarding the claim, to the department within thirty (30) days of the occurrence of the health care-acquired condition.

Section 3. Other Provider Preventable Conditions. (1) The department or a managed care organization shall not reimburse for a:

(a) Wrong surgical or other invasive procedure performed on a recipient;

(b) Surgical or other invasive procedure performed on the wrong body part; or

(c) Surgical or other invasive procedure performed on the wrong person.

(2) In accordance with 42 CFR 447.26, a provider who performs a procedure listed in subsection (1) of this section shall report it in writing, which shall include by electronic means or paper, to the department within thirty (30) days of performing the procedure.

(3) Subsection (1) and (2) of this section shall not apply to a nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disa-

1 bility.

2 Section 4. Compliance with 42 CFR 447.26. The department's or managed care or-
3 ganization's reimbursement shall comply with 42 CFR 447.26(c)(2) and (3).

4 Section 5. Supersede. If any policy stated in another administrative regulation within
5 Title 907 of the Kentucky Administration Regulations contradicts a policy stated in this
6 administrative regulation, the policy stated in this administrative regulation shall super-
7 sede the policy stated elsewhere within Title 907.

907 KAR 14:005

REVIEWED:

Date

Neville Wise, Acting Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

A public hearing on this administrative regulation shall, if requested, be held on August 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2012, five (5) work-days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 14:005

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Lisa Lee (502) 564-6890, Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the Medicaid program policies (managed care and non-managed care) regarding health care-acquired conditions and other provider preventable conditions.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a federal mandate in the Patient Protection and Affordable Care Act and 42 CFR 447.26.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the Patient Protection and Affordable Care Act and KRS 205.560 by establishing that the Department for Medicaid Services (DMS) and managed care organizations (MCOs) won't reimburse for medical assistance for health care-acquired conditions or other provider preventable conditions.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the Patient Protection and Affordable Care Act and KRS 205.560 by establishing that DMS and MCOs won't reimburse for medical assistance for health care-acquired conditions or other provider preventable conditions.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation rather than an amendment.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation rather than an amendment.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation rather than an amendment.
 - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation rather than an amendment.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect inpatient and outpatient hospitals, ambulatory surgical centers, physicians' practices, advanced practice registered nurse practices, rural health clinics, federally-qualified health care centers, primary care centers, and

dentists' practices.

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If a provider performs a provider preventable condition they are required to report it to the Department for Medicaid Services within thirty (30) days.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is imposed on providers.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not reimbursing for provider preventable conditions may decrease the likelihood of provider preventable conditions occurring.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: DMS anticipates a minimal increase in administrative expenditures initially for Medicaid Management Information System (MMIS) programming and related work necessary to preclude payment for provider preventable conditions.
 - (b) On a continuing basis: DMS anticipates no continuing cost resulting from the provider preventable condition amendment.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Title XIX of the Social Security Act and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 14:005

Agency Contact Person: Lisa Lee (502) 564-6890, Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act, 42 USC 1396a(a)(19), 42 USC 1396a(a)(30) and 42 CFR 447.26.
2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

KRS 205.560(1) states, "The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section."

3. Minimum or uniform standards contained in the federal mandate. Title II, Subtitle I, Section 2702 of the Patient Protection and Affordable Care Act and 42 CFR 447.26 prohibit federal payments for provider preventable conditions. 42 USC 1396a(a)(19) requires Medicaid programs to provide care and services consistent with the best interests of Medicaid recipients. 42 USC 1396a(a)(30) requires Medicaid program payments to be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
The amendment does not impose stricter, additional or different requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?
Yes X No _____
If yes, complete 2-4.
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be impacted by this administrative regulation.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This action is authorized by 42 CFR 447.26 and this administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.
 - (c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates a minimal increase in administrative expenditures initially for Medicaid Management Information System (MMIS) programming and related work necessary to preclude payment for provider preventable conditions.
 - (d) How much will it cost to administer this program for subsequent years? DMS anticipates very minimal on-going cost to administer the program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): _____

Expenditures (+/-): _____

Other Explanation: No additional expenditures are necessary to implement this amendment.